

By: Creighton, et al.

S.B. No. 1385

A BILL TO BE ENTITLED

AN ACT

relating to the compensation and professional representation of student athletes participating in intercollegiate athletic programs at certain institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds and declares the following:

(1) intercollegiate athletics are an essential part of the fabric of this state;

(2) the competitive integrity of intercollegiate athletics is of vital importance;

(3) the United States Congress has failed to act to provide uniform guidance to the states on the matter of intercollegiate athletes receiving compensation in exchange for the use of the athlete's name, image, or likeness; and

(4) the United States Congress must act on this matter to ensure the competitive integrity of intercollegiate athletics.

SECTION 2. Subchapter 2, Chapter 51, Education Code, is amended by adding Section 51.9246 to read as follows:

Sec. 51.9246. COMPENSATION AND PROFESSIONAL REPRESENTATION OF STUDENT ATHLETES PARTICIPATING IN INTERCOLLEGIATE ATHLETIC PROGRAMS. (a) In this section:

(1) "Athlete agent" has the meaning assigned by Section 2051.001, Occupations Code.

1           (2) "General academic teaching institution" and  
2 "private or independent institution of higher education" have the  
3 meanings assigned by Section 61.003.

4           (3) "Honor code" means a set of rules or principles  
5 governing an academic community to which a student agrees to abide  
6 when attending an institution to which this section applies.

7           (4) "Institutional contract" means a contract between  
8 an institution to which this section applies or its designated  
9 representative and an external party that includes a sponsorship  
10 agreement governing the use of the institution's trademarks in  
11 connection with athletics.

12           (5) "Team contract" means a contract between a student  
13 athlete and an institution to which this section applies and  
14 includes any rules or expectations of the institution's athletic  
15 department or head coach that require a student athlete's  
16 compliance as a condition under the contract of participation as a  
17 member of the intercollegiate athletic program.

18           (b) This section applies only to:

19                   (1) a general academic teaching institution; or  
20                   (2) a private or independent institution of higher  
21 education.

22           (c) An institution to which this section applies may not:

23                   (1) adopt or enforce a policy, requirement, standard,  
24 or limitation that prohibits or otherwise prevents a student  
25 athlete participating in an intercollegiate athletic program at the  
26 institution from:

27                           (A) earning compensation for the use of the

student athlete's name, image, or likeness when the student athlete is not engaged in official team activities, as that term is defined by the institution; or

(B) obtaining professional representation, including representation by an athlete agent or attorney, for contracts or other legal matters relating to the use of the student athlete's name, image, or likeness; or

(2) provide or solicit a prospective student athlete of an intercollegiate athletic program at the institution with compensation in relation to the prospective student athlete's name, image, or likeness.

(d) A scholarship, grant, or similar financial assistance awarded to a student athlete by an institution to which this section applies that covers the student athlete's cost of attendance at the institution is not compensation for purposes of this section.

(e) A student athlete participating in an intercollegiate athletic program at an institution to which this section applies may not be disqualified from eligibility for a scholarship, grant, or similar financial assistance awarded by the institution because the student athlete:

(1) earns compensation from the use of the student athlete's name, image, or likeness when the student athlete is not engaged in official team activities; or

(2) obtains professional representation, including representation by an athlete agent or attorney, for contracts or other legal matters relating to use of the student athlete's name, image, or likeness.

1       (f) An institution to which this section applies may not  
2 prescribe a team contract for an intercollegiate athletic program  
3 that prohibits or otherwise prevents a student athlete from using  
4 the student athlete's name, image, or likeness for a commercial  
5 purpose when the student athlete is not engaged in official team  
6 activities.

7       (g) A student athlete participating in an intercollegiate  
8 athletic program at an institution to which this section applies:

9           (1) shall, before entering into the contract, disclose  
10 to the institution, in the manner prescribed by the institution,  
11 any proposed contract the student athlete may sign for use of the  
12 student athlete's name, image, or likeness;

13           (2) may not enter into a contract for the use of the  
14 student athlete's name, image, or likeness if:

15                   (A) any provision of the contract conflicts with  
16 a provision of the student athlete's team contract, a provision of  
17 an institutional contract of the institution, a policy of the  
18 athletic department of the institution, or a provision of the honor  
19 code of the institution;

20                   (B) the compensation for the use of the student  
21 athlete's name, image, or likeness is provided:

22                           (i) in exchange for athletic performance or  
23 attendance at the institution;

24                           (ii) by the institution;

25                           (iii) in exchange for property owned by the  
26 institution or for providing an endorsement while using  
27 intellectual property or other property owned by the institution;

1 or

2 (iv) in exchange for an endorsement of  
3 alcohol, tobacco products, e-cigarettes or any other type of  
4 nicotine delivery device, anabolic steroids, sports betting,  
5 casino gambling, a firearm the student athlete cannot legally  
6 purchase, or a sexually oriented business as defined in Section  
7 243.002, Local Government Code; or

8 (C) the duration of the contract extends beyond  
9 the student athlete's participation in the intercollegiate  
10 athletic program;

11 (3) may not enter into a contract for the student  
12 athlete's representation by an athlete agent relating to use of the  
13 student athlete's name, image, or likeness unless the athlete agent  
14 holds a certificate of registration under Chapter 2051, Occupations  
15 Code;

16 (4) is not considered an employee of the institution  
17 based on the student athlete's participation in the intercollegiate  
18 athletic program; and

19 (5) may earn compensation from selling the student  
20 athlete's autograph in a manner that does not otherwise conflict  
21 with a provision of this section.

22 (h) An institution to which this section applies that  
23 identifies a provision in a contract disclosed to the institution  
24 by a student athlete under Subsection (g)(1) that conflicts with a  
25 provision in the student athlete's team contract, a provision of an  
26 institutional contract of the institution, a policy of the athletic  
27 department of the institution, or a provision of the honor code of

1 the institution shall promptly disclose the conflict to the student  
2 athlete or the student athlete's representative, if applicable.  
3 The student athlete or the student athlete's representative is  
4 responsible for resolving the conflict not later than the 10th day  
5 after the date of the disclosure.

6 (i) An institution to which this section applies shall  
7 require a student athlete participating in an intercollegiate  
8 athletic program at the institution to attend a financial literacy  
9 and life skills workshop at the beginning of the student's first and  
10 third academic years at the institution. The workshop must be at  
11 least five hours in duration and include information on financial  
12 aid, debt management, time management, budgeting, and academic  
13 resources available to the student athlete. The institution may  
14 not during the workshop allow any provider of financial products or  
15 services to:

16 (1) market, advertise, or refer the provider's  
17 services to a student athlete; or

18 (2) solicit a student athlete to use the provider's  
19 services.

20 (j) No individual, corporate entity, or other organization  
21 may:

22 (1) enter into any arrangement with a prospective  
23 student athlete relating to the prospective student athlete's name,  
24 image, or likeness prior to their enrollment in an institution of  
25 higher education; or

26 (2) use inducements of future name, image, and  
27 likeness compensation arrangement to recruit a prospective student

1 athlete to any institution of higher education.

2       SECTION 3. Section 2051.351, Occupations Code, is amended  
3 by adding Subsection (b-1) to read as follows:

4       (b-1) This chapter, including this section, does not  
5 prohibit an athlete agent from representing a student athlete in  
6 the use of the student athlete's name, image, or likeness in  
7 accordance with Section 51.9246, Education Code.

8       SECTION 4. Section 51.9246(f), Education Code, as added by  
9 this Act, applies only to a contract entered into, modified, or  
10 renewed on or after the effective date of this Act.

11       SECTION 5. This Act takes effect September 1, 2021.